

**Case Officer:** Michael Sackey

**Applicant:** BHK Preston Ltd

**Proposal:** Outline application for the erection of 12 No dwelling houses with All Matters Reserved except for Access and Layout

**Ward:** Deddington

**Councillors:** Councillor Zoe McLernon, Councillor Edward Fraser Reeves and Councillor David Rogers

**Reason for Referral:** Major development of 10+ dwellings

**Expiry Date:** 30 March 2026                      **Committee Date:** 26 March 2026

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**SUMMARY RECOMMENDATION: REFUSE PERMISSION**

**MAIN REPORT**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application relates to part of a green field located to the rear of 81 North Street at the western edge of the village of Fritwell. The site lies within the Mid-Cherwell Neighbourhood Plan Area. The site falls outside of the settlement area defined by the Mid-Cherwell Neighbourhood Plan Area.

**2. CONSTRAINTS**

2.1. The site is outside the Fritwell Conservation Area which lies immediately to the north and east of the site. The site is within the setting of number of listed buildings namely Wheatcroft, St Olaves Church and Heath Farmhouse. The site is within an area of archaeological interest. A Public Rights of Way (ref. Footpath 219/9/10) traverses south and west of the site. There are records of protected and notable species (including: Badgers) as being present within the vicinity of the site.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. This application seeks outline planning permission for the erection of 12no dwellings. Approval is sought for access and layout, with scale, appearance and landscaping reserved for future consideration.

3.2. The current application follows the refusal of earlier Permission in Principle (PIP) application (Ref. 24/00698/PIP) and also the previously withdrawn

scheme application (Ref: 22/01807/OUT), which was withdrawn prior to a decision of refusal being issued. The nature of the development proposal is similar to the PIP application as previously considered albeit with a greater quantum of development now being proposed, i.e. 12 units as opposed to up to the 7-9 units previously proposed.

3.3. Drawings numbered V25-125-SLP03 Rev A, V25-125-SBP03 Rev D and V25-125-SBP04 Rev P2 have been submitted in relation to the proposed layout, and drawing no. V25-125-P01 Rev C) provides an indicative street scene view of the development. The indicative details are further expanded upon in the supporting Design and Access Statement (DAS) and planning statement.

3.4. Whilst not for consideration at this stage, DAS and (Drwg. No. V25-125-SBP03 Rev D) and set out that the proposed development would look to provide a mix of 2, 3, 4 and 5-bedroom dwellings.

- Plot 1 - 192m<sup>2</sup> (4 bed)
- Plot 2 - 93m<sup>2</sup> (3 bed)
- Plot 3 - 104m<sup>2</sup> (3 bed)
- Plot 4 - 79m<sup>2</sup> (2 bed)
- Plot 5 - 93m<sup>2</sup> (3 bed)
- Plot 6 - 115m<sup>2</sup> (4 bed)
- Plot 7 - 196m<sup>2</sup> (3 bed)
- Plot 8 - 205m<sup>2</sup> (5 bed)
- Plot 9 - 79m<sup>2</sup> (2 bed)
- Plot 10 - 79m<sup>2</sup> (2 bed)
- Plot 11 - 215m<sup>2</sup> (5 bed)
- Plot 12 - 186m<sup>2</sup> (4 bed)

3.5. *Timescales for Delivery*: The applicant/agent has advised that: "...we are happy to reduce the period from 3 years to 2 years to get this project implemented and built out".

3.6. The application relates to email and amended plans received on (09.02.2026) at 14:52hrs reference "V25-125-SBP03 Rev D" and "V25-125-SBP04 Rev P2". The amended plans were submitted in response to the objection and comments of the Highways Officer.

3.7. The application relates to email and amended plans received on (11.02.2026) at 10:16hrs reference "CHERRYFIELD ECOLOGY - For the Site of: Land Adjoining And At 81 North Street Fritwell Oxfordshire OX27 7Q (Final - 10/02/2026)", "CHERRYFIELD ECOLOGY - For the Site of: Land Adjoining And At 81 North Street Fritwell Oxfordshire OX27 7Q (Final - 09/02/2026)", "Copy of Statutory Biodiversity Metric Condition Assessments - July 2025 - Land Adjoining And At 81 North Street Fritwell Oxfordshire OX27 7QR", "Copy of Statutory Biodiversity Metric Condition Assessments - July 2025 - Land Adjoining And At 81 North Street Fritwell OX27 7QR (AS PROPOSED)" and "Copy of Statutory Biodiversity Metric Condition Assessments - July 2025 - Land Adjoining And At 81 North Street Fritwell Oxfordshire OX27 7QR). The additional information was submitted in response to the objection and comments of the Ecology Officer. The assessment and

determination of this application is based on the amended plans and additional documents and information.

#### 4. RELEVANT PLANNING HISTORY

4.1. The following planning history is considered relevant to the current proposal:

**Application: 19/02162/F** Permitted 13 December 2019

Alterations to 81 North Street and the erection of a linked dwelling (3-bed) & associated works

**Application: 22/01807/OUT** Application Withdrawn 22 August 2022

Outline application with all matters reserved for extension to cottage to form pub & cafe / restaurant and 40 no dwellings

**Application: 23/00803/TCA** Permitted 4 May 2023

Supporting Documentation Attached

**Application: 24/00698/PIP** Appeal Dismissed (Against Refusal) 2 May 2024

Permission in Principle - proposed 7-9 dwellings

**Application: 25/01417/F** Permitted 3 September 2025

Variation of Condition 2 (plans) of 19/02162/F - revision to approved drawings

#### 5. PRE-APPLICATION DISCUSSIONS

5.1. No pre-application discussions have taken place with regard to this proposal

#### 6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **3 December 2025**, although comments received after this date and before finalising this report have also been taken into account.

6.2. 14 letters of objection and 0 letters of support were received following the publicity of the application. The comments raised by third parties are summarised as follows:

##### *Principle of development*

- Appropriateness of the application in terms of location and the context of the village

- Health and safety hazard and environmental impact of adjacent site
- The village has already provided land for development that exceeds the quota in the regional development plan.
- Sustainability; limited local services and loss of facilities
- Material consideration of emerging evidence for the new local plan and review of the Category A status of the village.
- No justification for development
- The application in Principle raises many of the issues that the previous application for a larger development raised.
- The site is not within the village and is part of the open countryside, lies outside the built-up area of the village, and the defined settlement boundary.
- Contrary to NPPF, the Cherwell Local Plan, Mid Cherwell Neighbourhood Plan and the Fritwell Conservation Area appraisal.

*Impact on visual amenity/landscape/views*

- Impact on rural surroundings
- Light pollution
- Impact on landscape and views
- Scale
- Out of keeping with local area
- Site levels
- Impact on public footpath

*Other impacts*

- Impact on character and appearance of Conservation Area
- Impact on historic setting and Grade II Listed Buildings
- Impact on Greenfield, Wildlife corridor and Ecology
- Archaeological impact
- Impact on neighbouring amenity
- Highway safety
- Impact on sewage system already at capacity

- Lack of streetlights and pavement

*Other matters raised*

- Previous issues raised within the previous appeal dismissal has not been addressed
- Disregard for previous permission.
- Likelihood of compliance with any permission granted.
- Concerns with the practices of the developer

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **7. RESPONSE TO CONSULTATION**

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

7.2. FRITWELL PARISH COUNCIL: **Objects** on the grounds of Planning history and precedent, Mid Cherwell Neighbourhood plan, Location of development, Highway safety, appropriateness of land for development, infrastructure issues and rapid growth with declining amenities.

7.3. CDC RIGHTS OF WAY – **No objections**

7.4. CLINICAL COMMISSIONING GROUP – **Objection**, unless developer contributions of £10,874 towards the creation of additional clinical capacity at Deddington HC or an identified primary care estates project in the local area to serve the development is secured through a section 106 agreement.

7.5. OCC ARCHAEOLOGY – Implementation of an archaeological field evaluation required, prior to determination of application

7.6. CDC Drainage – **No objections**

7.7. CPRE – **Objections** on the grounds of dismissed appeal, impact on heritage assets, conflict with Policies ESD15, COM 13 of emerging local plan, light pollution and impact on ecology,

7.8. CDC RECREATION AND LEISURE – **No objections** subject to contributions towards community hall facilities, off-site outdoor sport contributions, off-site indoor sport contributions and public artwork

7.9. CDC BUILDING CONTROL – **No objections**, the proposal is subject to the Building Regulations and will require an application to be submitted to a Building Control body for approval.

- 7.10. CDC ENVIRONMENTAL HEALTH – **No objections** subject to conditions on Construction Environmental Management Plan (CEMP) and contaminated land.
- 7.11. THAMES VALLEY POLICE – **No objections**, recommends
- 7.12. NATURESPACE – Additional information required in relation to mitigation of the proposed development on the Ecology of the site.
- 7.13. OCC HIGHWAYS – **Objections** on the grounds of access, speed limit transition and visibility splays.
- 7.14. OCC LLFA – **Objection**, lack of drainage strategy drawing and report
- 7.15. OCC EDUCATION – **No objection** subject to s106 contributions
- 7.16. OCC ARCHAEOLOGY – Lack of information on Archaeology of the site
- 7.17. OCC MINERAL WASTE – **No objections**
- 7.18. CDC ECOLOGY – **Objections** on the grounds of lack of information on BNG assessment and strategy and mitigation requirements for protected species.
- 7.19. CDC PLANNING POLICY – **Objection** on the grounds of the site not being put forward by the Housing and Economic Land Availability Assessment (HELAA) 2024 and the extension of the village into to the open countryside and have an adverse impact on the setting of the Fritwell Conservation Area. Housing and Economic Land Availability Assessment (HELAA) 2024.
- 7.20. CDC STRATEGIC HOUSING – **No objections** subject to the quantum and mix to be amended and at least one 4-bed houses to be in the rented affordable mix.
- 7.21. CDC CONSERVATION – **Objections** on the grounds of the impact on the setting of the heritage assets
- 7.22. CDC LANDSCAPE SERVICES - Consulted on (12.11.2025); no comments received.
- 7.23. MID CHERWELL HEIGHBOURHOOD FORUM - Consulted on (12.11.2025); no comments received.
- 7.24. OPEN SPACE SOCIETY - Consulted on (12.11.2025); no comments received.
- 7.25. CDC PUBLIC ART - Consulted on (12.11.2025); no comments received.
- 7.26. CDC WASTE AND RECYCLING - Consulted on (12.11.2025); no comments received.

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

#### CHERWELL LOCAL PLAN 2011-2031 PART 1 (CLP 2015)

- PSD1: Presumption in Favour of Sustainable Development
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient use of Land
- BSC 3: Affordable Housing
- BSC 4: Housing Mix
- BSC 11: Local Standards of Provision – Outdoor Recreation
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems
- ESD 8: Water Resources
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 : Local landscape protection and enhancement
- ESD15: The Character of the built and historic environment
- Villages 1: Village Categorisation
- Villages 2: Distributing Growth across the Rural Areas
- Villages 4: Meeting the Need for Open Space, Sport and Recreation

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8: Sporadic development in the open countryside
- C23: Retention of features contributing to character or appearance of a conservation area.
- C28: Layout, design and external appearance of new development
- C30: Design control
- C33: Protection of important gaps of undeveloped land
- ENV12: Development on contaminated land
- H18: New dwellings in the open countryside

#### CHERWELL LOCAL PLAN REVIEW 2042- Reg 22, Submitted 31st July 2025)

- Policy SP 1: Settlement Hierarchy
- Policy CSD 1: Mitigating and Adapting to Climate Change
- Policy CSD 2: Achieving Net Zero Carbon

- Policy CSD 5: Embodied Carbon
- Policy CSD 7: Sustainable Flood Risk Management
- Policy CSD 8: Sustainable Drainage Systems (SuDS)
- Policy CSD 11: Protection and Enhancement of Biodiversity
- Policy CSD 12: Biodiversity Net Gain
- Policy CSD 23: Assessing Transport Impact/ Decide and Provide
- Policy CSD 25: The Effective and Efficient Use of Land- Brownfield Land and Housing Density
- Policy COM 1: District Wide Housing Distribution
- Policy COM 2: Affordable Housing
- Policy COM 3: Housing Size/Type
- Policy COM 10: Protection and Enhancement of the Landscape
- Policy COM 11: Cherwell Local Landscape Designations
- Policy COM 13: Settlement Gaps
- Policy COM 15: Active Travel- Walking and Cycling
- Policy COM 16: Public Rights of Way
- Policy COM 20: Providing Supporting Infrastructure and Services
- Policy COM 24: Open Space, Sport and Recreation
- Policy RUR 1: Rural Areas Housing Strategy

8.3. Under Section 38 of the Planning and Compulsory Purchase Act 2004, a Neighbourhood Plan that has been approved at referendum also forms part of the statutory development plan for the area. In this case, the application site falls within the Mid Cherwell Neighbourhood Plan and the following Policies of the Neighbourhood Plan are considered relevant:

#### MID-CHERWELL NEIGHBOURHOOD PLAN 2018-2031

- PD1: Development at Category A Villages
- PD4: Protection of Important Views and Vistas
- PD5: Building and Site Design
- PD6: Control of Light Pollution
- PH1: Open Market Schemes

8.4. Other Material Planning Considerations

- Cherwell Local Plan Review 2042
- National Planning Policy Framework ('NPPF')
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)
- Cherwell Home Extensions and Alterations Design Guide (2007)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 ("HRA")
- Equalities Act 2010 ("EA")

## 9. APPRAISAL

9.1. The key issues for consideration in this case are:

- Principle of development
- Site Layout
- Housing Density and Mix
- Design, and impact on the character of the area
- Heritage impact
- Highways safety
- Residential amenity
- Ecology
- Flood-risk and Drainage
- Archaeology
- Other matters
- Impact on local infrastructure

### Principle of Development

#### *Policy Context*

9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the District comprises the adopted Cherwell Local Plan 2011-2031 ('CLP 2015') and the saved policies of the Cherwell Local Plan 1996. A key material consideration is the National Planning Policy Framework (NPPF) which sets out the Government's planning policy for England. The NPPF is supported by Planning Practice Guidance (NPPG) and various Ministerial Statements.

9.3. The NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs. So that sustainable development is pursued in a positive way, the NPPF includes a 'presumption in favour of sustainable development' (para. 11). Paragraph 11 states that applying the presumption to decision-making means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:
  - I. *the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or*
  - II. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against*

*the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.*

- 9.4. Paragraph 12 advises, *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'*
- 9.5. Section 5 of the NPPF covers the issue of delivering a sufficient supply of homes and states *"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet an area's identified housing need, including with an appropriate mix of housing types for the local community."*
- 9.6. Paragraph 208 states *"Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal."*
- 9.7. The Development Plan for this area comprises the CLP 2015, saved policies of the Cherwell Local Plan 1996 ('CLP 1996') and the Mid-Cherwell Neighbourhood Plan (2019).
- 9.8. Policy BSC1 sets out the Council's housing strategy, focusing development on Banbury, Bicester and Heyford Park.
- 9.9. Policy BSC2 states *"It is also important to make efficient use of land. In general, new housing should be provide data net density of at least 30 dwellings per hectare. However, the density of housing development will be expected to reflect the character and appearance of individual localities and development principles that are appropriate to the individual circumstances of sites."*
- 9.10. The AMR 2025, including a Housing Land Supply Position Statement, was approved by the Executive on 2nd December 2025. Based on the housing site supply shown in the AMR, the updated position demonstrates that the district has a 3.1 year supply of deliverable sites over the next five years. It is noted that 12 dwellings would make a contribution towards the district's housing land supply, including affordable housing provision.

- 9.11. As the Council cannot demonstrate a five-year housing land supply, in accordance with the NPPF, any assessment of the residential proposals will need to apply the 'tilted balance'.
- 9.12. The 'tilted balance' states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 9.13. However, case law has clarified that even where development plan policies are rendered "out of date" by housing land shortfalls, they remain "potentially relevant" to the application of the tilted balance and decision-makers are "not legally bound to disregard them".
- 9.14. Case law has also established that the provisions of the NPPF remain subordinate to the overriding principle established by section 38(6) of the Planning and Compulsory Purchase Act 2004 that decision-makers must have first regard to the terms of development plan policies.
- 9.15. The CLP 2015 seeks to allocate sufficient land to meet district-wide housing needs. The Plan states, '*The most sustainable locations for growth in the District are considered to be Banbury, Bicester and the larger villages as identified in Policies Villages 1 and Villages 2 as these settlements have a range of services and facilities, reducing the need to travel by car*'.
- 9.16. Paragraph C.262 of the CLP 2015 states that in assessing whether proposals constitute acceptable 'minor development', regard will be given to: the size of the village and the level of service provision, the site's context within the existing built environment, whether it is in keeping with the character and form of the village, its local landscape setting and careful consideration of the appropriate scale of development.
- 9.17. Policy Villages 2 states that a total of 750 dwellings will be delivered at the Category A villages on new sites of 10 or more dwellings. The proposal would contribute towards meeting the overall Policy Villages 2 requirement. However, it should be noted that the AMR (2025) states that since 1<sup>st</sup> April 2014, 1049, completions have been recorded at Category A villages and as such the Policy Villages 2 requirement has been met.
- 9.18. Between 2011-2024 there were 37 residential completions in Fritwell, with 18 residential completions between 2023 -2024. There are 12 dwellings in Fritwell with permission that have not been completed.
- 9.19. Fritwell is a Category A Service Village under Policy Villages 1. Category A settlements are considered suitable for minor development, infilling and conversions within the built-up limits of the village.
- 9.20. Saved Policy H18 of the CLP 1996 seeks to restrict new dwellings outside the built-up limits of villages except in a specific number of cases.

### *Assessment*

- 9.21. As outlined above the site is located at Fritwell, a Category A Village. Residential development is permissible *within the built limits* of Category A villages if it comprises the conversion of non-residential buildings, infilling or minor development comprising small groups of dwellings.
- 9.22. Given the site's undeveloped nature, its spatial relationship with surrounding built form and the planning history of this site, the site is considered to be located outside the built-up area of the village, outside of the settlement area and - for planning purposes - in the open countryside.
- 9.23. In the assessment of application ref: 19/02162/F the officer confirmed that the site falls outside the settlement area by stating: *"The site lies within the Mid-Cherwell Neighbourhood Plan (MCNP) area which now forms part of the Development Plan for the area. In accordance with the MCNP, Fritwell is identified as a Category A settlement which is amongst the most sustainable rural settlements in the rural area of the district. The MCNP establishes settlement areas for the Category A villages and the extent of Fritwell's settlement area is defined by Figure 9 of the MCNP. This shows the frontage of the site being located within the settlement boundary but the field to the rear being outside of the settlement area."*
- 9.24. Policy PD1 of the MCNP states that the total indicative number of new dwellings permitted during the Plan period (2018-2031), either within the settlement boundary or adjacent to it, will be approximately 25 for Fritwell. Permissions have been granted (19/00616/OUT and 21/02180/REM (28 dwellings)), (19/01402/OUT and 22/02620/REM (1 dwelling)) and (19/02162/F (1 dwelling)). Other developments have been approved at Fritwell though these were granted prior to the MCNP plan period. Nonetheless, with 30 dwellings approved it is considered that Policy PD1 and Policy Villages 2 requirement has already been exceeded when considering all of the planning permissions and in addition to identified sites without planning permission in the Housing Delivery Monitor.
- 9.25. The proposal would therefore not be in accordance with the distribution of housing the Development Plan seeks to achieve under the aforementioned policies and is therefore considered to be contrary to Development Plan.
- 9.26. However, planning law requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is therefore necessary to consider whether there are other material considerations of the proposal which outweigh the conflict with the Development Plan.
- 9.27. The sustainability of Fritwell is an important material consideration. Fritwell is classified as a Category A village in the CLP 2015. Category A villages are considered the most sustainable settlements in the District's rural areas and have physical characteristics and a range of services within them to enable them to accommodate some limited extra housing growth although Inspectors have dismissed appeals at some of the less sustainable Category A villages (Finmere, Fringford, Chesterton, Weston on the Green). Fritwell is one of the smaller Category A villages. It does have a village shop and a primary school, and a public house albeit which is not currently open as a

pub. Since the adoption of the CLP 2015 the bus service to Fritwell has substantially diminished with no form of public transport for the Village and the Village has therefore become a less sustainable since the adoption of the CLP 2015. Bicester is also approximately 4.4 miles to the south of the site which has a wider range of services, facilities and employment opportunities and this proximity would not likely reduce the length of car journeys to access services and facilities.

- 9.28. The NPPF states that local planning authorities ('LPAs') may give weight to relevant policies in emerging plans subject to the stage of preparation, the extent of unresolved objections relating to the relevant policies, and the degree of consistency of those policies with the NPPF.
- 9.29. It is considered that some limited weight can be given to the policies in the emerging Cherwell Local Plan Review 2042, which was submitted to the Secretary of State for examination on 31st July 2025.
- 9.30. Policy SP1: Settlement Hierarchy, notes that Fritwell is proposed to be re-designated as a Category C village in the Cherwell Local Plan Review 2042, suitable for infill development, minor development within the built-up limits of the settlement and conversions. (It should be noted that a substantial number of representations, including objections were made on Policy SP1: Settlement Hierarchy and will be considered by the Inspectors during the examination of the Local Plan. However, it should be noted that relatively few representations were received specifically relating to Fritwell's classification in the policy.) In addition, the site was not put forward for assessment in the Housing and Economic Land Availability Assessment (HELAA) 2024.
- 9.31. Policy Villages 3 relates to Rural Exception Sites. It provides support for small scale affordable housing schemes within or immediately adjacent to villages to meet specific, identified local housing needs that cannot be met through allocated sites, subject to several criteria being met.
- 9.32. Overall, it is considered that whilst some limited services would be available to residents on foot, given the distance and nature of routes residents of the site are likely to be highly dependent on private cars to meet their day to day needs. This weighs significantly against the proposal given the strong drive in the NPPF for sustainable patterns of development that aren't reliant on the private car.
- 9.33. In some instances, there are some benefits of allowing growth on a larger site (as opposed to multiple smaller sites) as planning obligations can be provided to mitigate impacts on infrastructure and affordable housing can be secured. The application seeks consent for a residential development of 12 dwellings of which 33% affordable housing and this provision is given moderate weight. However, the identified harm of the proposal is considered not to mitigate this limited benefit of the scheme providing affordable housing.
- 9.34. It is acknowledged that the proposed dwellings would make a small contribution to housing in the district and the construction phase would bring with it modest economic benefits. These points give moderate weight in favour of the application. However, the proposal as submitted does not

provide any substantial material consideration to outweigh the identified harm and non-compliance to local policy identified in the previous applications at the site and the current proposal.

9.35. The inspector for appeal reference (APP/C3105/W/24/3344189), also addressed the issue of land supply in his decision letter at paragraph 24 stating that

*“Even if the Council is unable to demonstrate a sufficient housing land supply, paragraph 11 d) (i) of the Framework states that permission should be granted unless policies of the Framework that protect assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 of the Framework states that the policies referred to include those relating to designated heritage assets. Given the harm I have identified to the setting and significance of the CA, this provides clear reason for refusing the proposal as set out in the Framework. As such, the presumption in favour of sustainable development set out at paragraph 11 of the Framework is not applicable in respect of this appeal, irrespective of the housing land supply position.”*

9.36. The application site lies outside the built limits of Fritwell and the settlement area as defined by Policy PD1 of the Mid-Cherwell Neighbourhood Plan (MCNP) and therefore development of the site is contrary to Policy PD1. Although the MCNP allows for housing at Fritwell, the number allocated for Fritwell has now been met and exceeded. The site is in an inherently unsustainable location, and future residents would be highly reliant on the private car.

9.37. Furthermore, the introduction of significant new residential development on the site would be contrary to the existing character and appearance of the site and its wider setting within the landscape. The Conservation Officer has also confirmed that the proposal would also cause harm to the heritage assets. There is also insufficient information submitted to be able to assess the impact of this development on archaeological deposits of the site.

9.38. In terms of safe vehicular and pedestrian access/egress being provided, the LHA has raised and maintain its objections to the proposals and considers the principle of development unacceptable in terms of highway safety.

9.39. With regards to potential for flood-risk the site is not within an area considered to be at a high risk of flooding. However, and having regard to the Lead Local Flood Authority's advice, the application has not been accompanied by information to confirm that an acceptable sustainable drainage strategy can be achieved; in this respect it concluded that the proposals have failed to demonstrate that an acceptable sustainable drainage strategy for the site can be delivered.

### *Conclusion*

9.40. The application site lies outside the built limits of Fritwell and the settlement area as defined by Policy PD1 of the MCNP and therefore development of the site is contrary to Policy PD1. Although the MCNP allows for housing at

Fritwell, the number allocated for Fritwell has now been met and exceeded. The site is in an inherently unsustainable location, and future residents would be highly reliant on the private car. Although the scheme would provide for affordable housing, this contribution is given moderate weight, these points are considered to significantly outweigh the benefits of the scheme identified above and therefore the location of the site is considered unsuitable for residential use.

9.41. It is concluded that the principle of the development 12no. dwellings in this location is contrary to Development Plan policies Policy PD1 of the MCNP, Policy Villages 1 and Policy Villages 2 of the CLP 2031 and Saved Policy H18 of the CLP 1996; and as such the proposals would be contrary to the Council's rural housing strategy and associated policies, and are unacceptable in principle.

#### Site layout

9.42. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and high-quality design meeting high design standards and complementing any nearby heritage assets. The NPPF is clear that good design is a fundamental to what the planning and development process should achieve and is a key aspect of sustainable development.

9.43. The proposed development lies on the edge of the village but outside of the built-up limits. The site is located at a prominent roadside position at the entrance to the village of Fritwell, which has a strong rural character and relationship with the open countryside. The site relates much more to the open countryside to the west and south of the site than it does to the built form of the village.

9.44. The layout of the proposed development incorporates a primary street or arterial road gained from Somerton Road to the north-west, with two secondary streets and two driveways accessed off the primary street. The two secondary streets end with cul de sacs to the north-east and south-west of the site. The proposed dwellings are positioned to either front the primary street or the secondary street.

9.45. The site bounds the open countryside to the east, south and west and a looser form of development to the western part of the site which is normally expected on this side to enable an appropriate transition from the built form of the development to the open countryside.

9.46. Having regards to the spatial relationship between the proposed dwellings, the proposed dwellings are considered to have acceptable spatial distance between the dwellings and on the whole are considered acceptable.

9.47. It is considered that site layout of the proposal is acceptable and would generally comply with Policy ESD15 of the CLP 2015

Details of appearance of the building would normally be considered under a reserved matters application and are therefore not for consideration in this application.

### Housing Density and Mix

#### *Policy Context*

- 9.48. The NPPF advises that in order to create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing, to reflect local demand and set policies for meeting affordable housing need. Policy BSC4 of CLP 2031 echoes the aims of the NPPF requiring new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities.
- 9.49. Policy BSC2 of the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031) reflects the aims of national guidance and requires that new housing should be provided on net developable areas at a density of at least 30 dwellings per hectare (DPH) unless there are justifiable planning reasons for lower density development.
- 9.50. Policy BSC 3 of the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031) states that that sites of 11 or more dwellings will be required to provide affordable housing. Outside of Banbury and Bicester, the policy requires 35% from the developer units to be affordable housing.
- 9.51. Policy BSC4 of the CLP 2031 states that: *'New residential development will be expected to provide a mix of homes to meet current and expected future requirements in the interests of meeting housing need and creating socially mixed and inclusive communities'*. Further that: *'The mix of housing will be negotiated having regard to the Council's most up-to-date evidence on housing need and available evidence from developers on local market conditions'*
- 9.52. The proposal is for 12no. dwellings on a site of approximately 0.93Ha resulting in a proposed density of 12.9 DPH; this is significantly below the density required under Policy BSC2. The justification put forward in the submitted planning statement refers to paragraph 9, 11, 12, 13 and 14 of the appeal decision at the site for between 7 and 9 dwelling (Ref: APP/C3105/W/24/3344189), where the inspector considered that the proposal for lower density than currently proposed would not conflict with the purposes of Policy BSC 2 as an increase in density would further increase the identified harm.
- 9.53. The council's Planning Policy also raised concerns with the level of density proposed being lower than required, however advised that Policy BSC 2 does acknowledge that justifiable planning reasons may mean that a lower density development is acceptable.
- 9.54. The Council's Strategic Housing Team comments on the application providing affordable housing in the rural village was generally supportive of subject to amendments to the quantum and mix of the affordable housing, for full support.

#### *Conclusion*

- 9.55. Therefore, although density could be considered acceptable in this instance and had there not been overriding factors, officer would have sought to address the quantum and mix of the proposed affordable housing to be amended as set out in the Strategic Housing Officer's comments, which requires at least one of the 4-bed houses to be in the rented affordable mix based on the identified need.
- 9.56. By virtue of the proposed housing mix, the proposals would not accord with Policy on housing mix, and the current proposal is therefore contrary to Policy BSC3 of the CLP 2031 and Government guidance within the NPPF.

### Design and Impact on the Character of the Area

#### *Policy context*

- 9.57. Policy ESD15 of the CLP 2015 highlights the importance of the character of the built and historic environment. This Policy states, amongst other things, that successful design is founded upon an understanding and respect for an area's unique built, natural and cultural context. New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design. The Policy states that new development proposals should, amongst other things, contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views. Development should also respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.
- 9.58. Policy PD4 on the protection of important views and vistas states "Development proposals within the plan area must demonstrate sensitivity to the important views and vistas described in Table 4 and illustrated by photographs in the documents referred to in that Table, by including an assessment of the significance of the views and the effect of the proposed development on them. Proposals which cause significant harm to any of these views will only be acceptable where the benefits of the proposal clearly outweigh any harm" and "Applicants for development in or adjacent to a Conservation Area must demonstrate in a Heritage Impact Assessment that they have taken account of the appropriate Conservation Area Appraisal, and of the Heritage and Character Assessment at Appendix K, and demonstrated that the proposal causes as little harm to an identified view as possible and that any harm is outweighed by the benefits of the proposal. The development should not harm the Conservation Area and its setting, other heritage assets, or historic street and village views and longer distance vistas."
- 9.59. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be

exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.

- 9.60. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes and adjacent to areas of the public open space, the use of traditional building materials and detailing and form that respond to the local vernacular.
- 9.61. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 9.62. The site is located to the northwest of the village of Fritwell and to the north and east of the site are several dwellings accessed from North Street, and to the south of the site and beyond is the remainder of the existing field parcel, which is not included in the application site.
- 9.63. The Character Appraisal supporting the MCNP identifies the entrance to the village with the views over the chimneys and roof space of the village as a positive view and that the loose knit arrangement of buildings at the entrance to the village significantly contributes to the character and appearance of the area and imparts a spacious rural character. The rural character of the village is further enhanced by views between buildings onto the fields surrounding the village.
- 9.64. The application site is positioned within a rural character of the village, and the LPA considers that this part of the village outside the settlement area as an existing important part of Fritwell. The existing site provides a clear expression of the village being set within a wider rural setting and also a visual break in the built form. Any development in this location would harmfully remove this visual relief, this clear expression of the village from this end of the village and would result in more hard landscaping and building in what is a relatively open undeveloped field.
- 9.65. Given the site is located within the setting of Fritwell Conservation Area and setting of a listed building, it is important to consider the effect of the proposal on the character and appearance of the Conservation Area, as well as the setting of listed buildings, notably Wheatcroft to the north-east of the site and to a lesser extent other listed buildings to the south-east of the site.
- 9.66. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker, in considering whether to grant permission in principle for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

- 9.67. The views gained from the public footpath running along the western and southern part of the application site and glimpses from Somerton Road and North Street and near the site are considered to be positive views into the conservation area, and as such any development on this site would have an impact on this view.
- 9.68. Another notable constraint to this site and the proposed development is the elevated nature of the plot in comparison to properties to the north and east of the site.
- 9.69. It is noted that the proposed scale of the development has been significantly reduced from the previous application ref 22/01807/OUT. Whilst this reduction in the scale of the development is noted, it is considered any development in this location would have a significant impact.
- 9.70. Indicative plans have been submitted for the proposed dwellings: however, in broad terms any residential development of the site along with the necessary access would be visible from Somerton Road and North Street and the public footpath and would inevitably result in urbanisation of the site. Whilst landscaping could reduce this harm, given the undeveloped nature of the site there would remain significant harm to the rural character and appearance of the site. The footpath appears to be well used by locals for recreational walks which heightens its sensitivity, and it is clearly an area that is valued by local people.
- 9.71. Given the prominence of the site in terms of the elevated levels, it is considered that the intensification of the use of the site and the change in character from agricultural would cause harm to the setting of the Fritwell Conservation Area through an increase in built form and housing density of this end of the village diminishing the rural character of this part of Fritwell.

### *Conclusion*

- 9.72. Overall, it is considered that the proposal would result in harm to the rural character and appearance of the area and rural setting of the village and conflicts with Policies PD1 and PD4 of the MCNP and ESD1, ESD13 and ESD15 of the CLP 2015. It is considered to be contrary to Development Plan when considered as a whole.

### Heritage Impact

#### *Legislative and policy context*

- 9.73. The site is within the setting of a Conservation Area and listed buildings and affects these heritage assets.
- 9.74. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

- 9.75. Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.76. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 205 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2015 echoes this guidance.
- 9.77. Policy ESD15 of the CLP 2015 states that new development proposals should: *"Conserve, sustain and enhance designated 'heritage assets' (as defined in the NPPF) including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated in accordance with advice in the NPPF and NPPG."*

#### *Assessment*

- 9.78. The Conservation Officer has responded to the current application stating that,

*"The significance of the site relates to the entrance to the conservation area as the site provides a clear expression of the village being set within a wider rural setting. It is considered that despite the reduction in the number of dwellings the comments provided by the conservation team 18/07/2022 in relation to application 22/01807/OUT are still largely relevant. The reduction in the number of dwellings and the revised layout has addressed the concerns to some extent but development on this land will impact on the heritage assets through development within their setting."*

*The proposal because of the indicative size and nature of the dwellings is considered to result in a change to the rural character of the land which will detrimentally alter this approach to the village and how the entrance to the conservation area is experienced. The development will still have an urban form that will potentially encroach on views across the landscape to the listed buildings and conservation area.*

*The Heritage Statement is agreed with and accepting that this is an outline application, it is considered that there will potentially be less than substantial harm at the lower level to Fritwell conservation area and the listed building known as Wheatcroft. It is suggested that this heritage harm could be reduced or removed by a further reduction in the number of dwellings and a change to the layout so that the built development is contained to the north of the viewing corridor to the church."*

9.79. Officers consider that the dominance of the proposed development would cause harm to the significance of the adjacent Grade II Listed Building Wheatcroft through change to its setting and would detract from the special character of the building. The proposed development would be seen in the context of this building.

9.80. As noted above, the Conservation Officer advises that the proposal would cause *less than substantial* harm to Fritwell Conservation Area and the listed building known as Wheatcroft albeit at the lower level of *less than substantial* harm. This is consistent with the heritage position on the earlier outline application at the site, the CO raising the same concerns in relation to the detrimental impact of development on the rural character and appearance of this key entrance to the village and advising that the proposal would significantly reduce any views out to the open countryside surrounding this part of the village. This identified harm remains in the current proposal due to the location of the development.

### *Conclusion*

9.81. Therefore, and having regard to the comments of the conservation officer, the proposed development would cause harm to the significance of heritage assets through change to their setting. This harm is not considered to be outweighed by any public benefit arising from the scheme. The proposed development is therefore contrary to Policy ESD15 of the CLP 2015, Saved Policy C28 and C30 of the CLP 1996 and advice in the NPPF on design and heritage matters.

### Highway Safety

#### *Policy context*

9.82. Both Policies ESD15 and SLE4 of the CLP 2015 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2015 states that: “*New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions*”; whilst Policy SLE4 states that: “*All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported*”.

#### *Assessment*

9.83. The Local Highway Authority (LHA) initially objected to the application raising *in principle* issues with the proposed access design and connectivity, insufficient demonstration that safe and suitable access can be achieved for all users and potential for unacceptable highway safety impacts.

9.84. Following amended plans that aimed to address the initial objection, the LHA has responded maintaining its objection to the application on the basis that the submission and associated access design fails to demonstrate that the proposed development would provide safe and suitable access for all users

and due to unresolved deficiencies, the application has not demonstrated that the development would avoid unacceptable impacts on highway safety, contrary to Paragraph 116 of the NPPF. There remain issues relating to the proposed access, speed limit transition, vehicular access, and lack of improvements and upgrading of the existing footpath that runs across the site.

### *Conclusion*

- 9.85. The proposed development would result in significant and demonstrable harm to local highway safety and adverse impacts on pedestrian safety within the vicinity of the site. The proposed development is therefore contrary to Policy ESD15, which requires new development proposals to deliver safe high quality spaces, and Paragraphs 115 and 116 of the NPPF.

### Residential Amenity

#### *Policy Context*

- 9.86. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2015 which states that: *'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'*.

#### *Assessment*

- 9.87. The application is an outline application only. Any detailed proposals would need to have due regard to requirements of the Cherwell Residential Design Guide SPD (CRDG) with regard to appropriate standards of amenity for both existing and future residents. Whilst the indicative layout appears to demonstrate that an acceptable living environment could potentially be developed, appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 9.88. As noted above the majority of the proposed development would be physically divorced from existing properties and would not likely have a direct impact on existing residential amenity.
- 9.89. The plots considered to have the greatest potential impact on neighbouring properties would be plots 1, 2, 3 and 4 which would be sited in excess of 24m south-west from the rear of 81 North Street (nearest property to the north of the site). This separation distance is considered appropriate having regard to the guidance within the CRDG.
- 9.90. In respect of noise and disruption during construction, it is considered that such impacts are unlikely to be significant and would only likely be short-term in their nature, and not something that would warrant a reason to refuse the application; and should the Council be minded to approve the application that

an appropriate Construction Environment Management Plan, could be secured by way of condition to satisfactorily address such matters.

### *Conclusion*

9.91. Based on the information submitted it is considered that, given the context of the site and its relationship with neighbouring properties, the site could be developed for 12no dwellings without it resulting in any significant impact on neighbour amenity in terms of loss of light, loss of privacy or over domination as a result of the proposed development. Further that the proposed development would likely provide an acceptable standard of living for potential future occupants. However, this would need to be fully assessed during any detailed Reserved Matters application, should Council be minded approving this outline application.

### Ecology

#### *Legislative context*

9.92. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.

9.93. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.

9.94. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.

9.95. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:

- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of

a social or economic nature and beneficial consequences of primary importance for the environment?

(2) That there is no satisfactory alternative.

(3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

9.96. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

### *Policy Context*

9.97. Paragraph 180 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

9.98. Paragraph 186 states that when determining planning applications, local planning authorities ('LPAs') should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

9.99. Paragraph 191 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

9.100. Policy ESD10 of the CLP 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.

9.101. Policy ESD11 is concerned with Conservation Target Areas (CTAs) and requires all development proposals within or adjacent CTAs to be

accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.

9.102. These polices are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.

9.103. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

9.104. The Council's Ecologist (CE) responded to the application advising that in relation to the submitted BNG report an ecologist must visit the site to confirm the details in the BNG assessment which should include confirmation of habitat classifications and the undertaking conditions assessments, and if verified, the baseline presented in their submitted metric could be agreed. The CE advises that the BNG strategy is currently unknown and needs to be clarified on whether the applicants intend to create off-site habitats, or whether they plan to purchase units/credits to deliver 10% gain, which must be confirmed at this stage because if the applicants plan to create-off site habitats, a legal agreement with the council is required. The CE also advised that the proposes the retention of a native hedgerow and if this is deemed acceptable, it must show it will be outside private gardens and managed appropriately.

9.105. The CE confirmed that no Preliminary Ecological Appraisal has been submitted, which is required because the site is a red risk zone for great crested newts and includes commuting and foraging potential for bats, birds and badgers, and that there is also a stream or ditch along the southeast corner of the site which may need to be included in the BNG assessment under metric guidance. The CE also advised that confirmation is required whether this feature is relevant based on the guidance found in the BNG metric user guide.

9.106. NatureSpace has noted that more information is needed on Great Crested Newts and that the applicant must confirm whether they will join the district licensing scheme. With regards to the comments of the CE and NatureSpace all the outstanding information and clarification was required to be provided prior to determination to be inline national and local policies.

9.107. Additional information was submitted in response to CE initial comments; however the CE has responded advising that the Biodiversity Net Gain assessment is still incomplete, the ecological appraisal confirms that "there are unnamed watercourses approximately 7m east of the site, and that the statutory biodiversity metric user guide clearly requires that any watercourse located within 10 metres of the red line boundary must be included within the

baseline BNG calculation. Furthermore, the application continues to lack the necessary confirmation regarding Great Crested Newt mitigation, although the ecological reports indicate an intention to enter the NatureSpace District Licensing Scheme, formal written confirmation of acceptance onto the scheme must be provided prior to determination.

9.108. The CE concluded that without the required information, the application does not provide sufficient information to demonstrate that protected species mitigation requirements will be met or whether further surveys will be required prior to determination.

### *Conclusion*

9.109. On the basis of the advice from the Council's Ecologist and Naturespace officers conclude that insufficient information has been submitted and that the proposal would fail to protect or enhance the biodiversity and the natural environment of the site. The proposal would therefore be contrary to Policies ESD10 and ESD15 of the CLP 2015 and would not be acceptable in terms of the ecology of the site.

### Flood Risk and Drainage

#### *Policy Context*

9.110. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.

9.111. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

9.112. The Sustainable Drainage Systems (SuDS) Policy, which came into force on the 6th April 2015 requires the use of sustainable drainage systems to manage runoff on all applications relating to major development. As well as dealing with surface water runoff, they are required to provide water quality, biodiversity and amenity benefits in line with National Guidance. The Sustainable Drainage Systems (SuDS) Policy also implemented changes to the Town and Country Planning (Development Management Procedure) (England) Order 2010 to make the Lead Local Flood Authority (LLFA) a statutory Consultee for Major Applications in relation to surface water drainage. This was implemented in place of the SuDS Approval Bodies (SAB's) proposed in Schedule 3 of the Flood and Water Management Act 2010.

9.113. The NPPF (Dec2024) provides specific principles on flood risk (Section 14, from page 45). The NPPG provides further advice to ensure new development will come forward in line with the NPPF.

9.114. The non-statutory technical standards for sustainable drainage systems were produced to provide initial principles to ensure developments provide

SuDS in line with the NPPF and NPPG. Oxfordshire County Council have published the “Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire” to assist developers in the design of all surface water drainage systems, and to support Local Planning Authorities in considering drainage proposals for new development in Oxfordshire. The guide sets out the standards that we apply in assessing all surface water drainage proposals to ensure they are in line with National legislation and guidance, as well as local requirements.

9.115. The SuDS philosophy and concepts within the Oxfordshire guidance are based upon and derived from the CIRIA SuDS Manual (C753), and we expect all development to come forward in line with these principles.

#### *Assessment*

9.116. The Lead Local Flood Authority (LLFA) raised an objection to the application advising that all full and outline planning applications for Major Development must be submitted with a Surface Water Management Strategy. A site-specific Flood Risk Assessment (FRA) is also required for developments of 1 hectare or greater in Flood Zone 1; all developments in Flood Zones 2 and 3 or in an area within Flood Zone 1 notified as having critical drainage problems; and where development or a change of use to a more vulnerable class may be subject to other sources of flooding.

9.117. The LLFA has further advised that in line with guidance, surface water management must be considered from the beginning of the development planning process and throughout, which influence the site layout and design and that the proposed drainage solution should not be limited by the proposed site layout and design.

#### *Conclusion*

9.118. In light of the LLFA’s objection officers consider that the applicant has failed to demonstrate that appropriate surface water drainage scheme for the site, based on sustainable drainage principles, can be achieved; the proposals are therefore not considered to be in accordance with the Development Plan policies identified above and are not acceptable in terms of flood-risk and drainage.

#### Archaeology

9.119. The County Council Archaeological Officer (AO) informed that the site in an area of archaeological interest and potential on the southwestern edge of the village of Fritwell, an archaeological watching brief was carried out at Heath Farm, 100m southeast of the proposed site, which recorded a Medieval foundation and other Medieval features (PRN17484). Historic OS maps show that the plot has remained undeveloped, and so there is potential for archaeological remains related to the development of the settlement to be impacted by the development.

9.120. The AO advised that the applicant has submitted a heritage assessment in line with paragraph 207 of the NPPF, however this assessment only considers standing buildings and makes no attempt to assess the impact on

archaeological heritage assets and that the NPPF, paragraph 207, states that the Historic Environment Record should be consulted as a minimum, but this data is not considered by the heritage assessment. As such there is insufficient information to be able to assess the impact of this development on archaeological deposits at the site.

9.121. Officers agree with this assessment and the proposal due to the insufficient information is considered unacceptable in terms of the potential archaeological deposits at the site. and would conflict with Policy ESD15 of the CLP and Government guidance in the NPPF.

#### Other matters

#### Contamination

9.122. The Environmental Protection Team notes the potential for noise, dust and other nuisance and for unexpected land contamination during construction. Given this conclusion, planning conditions could be recommended to require a Construction Environmental Management Plan (CEMP) and unexpected land contamination to secure appropriate mitigation if this application were to be recommended for approval and as recommended by the Council's Environmental Protection Team.

#### Rights of Way

9.123. The Rights of Way Officer (ROW) has responded to the application raising no objections and advising that from reviewing the documents submitted, the officer notes that Fritwell Public Footpath 219/9/10 runs diagonally across and through the proposed development site and the council will always expect the developer to design the existing Public Rights of Way within any new development layout. The officer is pleased to see that the developer has fully considered the Public Rights of Way Network within their application and that they have retained the Public footpath on its existing legal alignment. The proposal is therefore considered acceptable in terms of its impact on the Public Rights of Way Network across the site.

#### Impact on Local Infrastructure

#### *Policy Context*

9.124. Policy INF1 of the CLP 2015 states that: *“Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.”*

9.125. Policy BSC11 of the CLP 2015 states that: *“Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’.* Where this is not possible or appropriate, a financial

contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.”

9.126. The Council has an adopted Supplementary Planning Document (SPD) setting out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

#### *Assessment*

9.127. Where on and off site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonably related in scale and kind to the development

9.128. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

9.129. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers' view need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:

#### Cherwell District Council

- Provision of public open amenity space and future maintenance arrangements;
- Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development.
- Financial contributions towards improvements to off-site indoor and outdoor sports facilities;
- Financial contribution towards the provision of new community hall facilities.
- Public Art
- Affordable housing

#### Oxfordshire County Council

- Education - Financial contribution of £190,712.00 toward secondary and special school contribution.
- Transport - To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: Formation of a new site access and provision of a footway link on the North Street to the existing footway network within the village (including change to speed limit transition and associated TRO, associated signage and gateway feature and traffic calming measures). Delivered via S278 Agreement.
- Financial contribution as set out above or delivery of a PRow improvement scheme (requiring prior approval).
- There shall be a requirement to enter into a S38 Agreement in relation to the internal site network.

NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board)

- Creation of additional clinical capacity at Deddington HC or an identified primary care estates project in the local area to serve the development to be secured through a Section 106 Agreement.

*Conclusion*

9.130. A number of items would need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council, in order to secure an appropriate quality of development as well as adequately mitigate adverse impacts that would otherwise occur.

Human Rights and Equalities

9.131. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.

9.132. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

*Article 6*

9.133. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of [neighbour letter, site notice and in the local press] giving affected third parties the opportunity to comment on the application and their views taken into account when considering the

application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. [In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak]. Furthermore should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

*Article 8 and Article 1 of the First Protocol*

9.134. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.

*Duty under The Equalities Act 2010*

9.135. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.

9.136. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application

## **10. PLANNING BALANCE AND CONCLUSION**

10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.

10.2. Given the above assessment in the light of current guiding national and local policy context, it is considered that the proposals represent an inappropriate form of development beyond the built-up limits of the village, which no essential or identified need has been demonstrated.

10.3. Whilst the proposals could be considered acceptable in terms of residential amenity and in isolation the layout is acceptable in principle, it is considered that the proposal fails to preserve the overriding character and appearance of the area and heritage assets or reflect or reinforce local distinctiveness by introducing residential development which would be contrary to the existing pattern of development within the area, outside the built limits of the village and the settlement area and would visually intrude into the open countryside.

- 10.4. Further that it has not been demonstrated that an appropriate sustainable drainage strategy, housing mix, and highway safety could be achieved at the site. In addition, it has not been demonstrated that the proposal would protect and enhance the Ecology of the site and would not adversely impact the potential archaeology of the site.
- 10.5. The proposals would provide additional and affordable housing (attracting significant weight, very significant weight in the case of affordable housing) and likely to provide some economic benefits to the local construction industry during construction (limited to moderate weight).
- 10.6. However, it is considered that the proposals demonstrate clear conflict with the provisions and aims of the housing policies of the Development Plan, including those of the adopted Mid-Cherwell Neighbourhood Plan (attracting substantial weight), and so the weight to be attributed to the benefit of providing additional and affordable housing is reduced.
- 10.7. In addition to this conflict, it is considered that there would be significant adverse impacts to the natural environment (substantial weight), through intrusive development which fails to reflect or reinforce the local distinctiveness, and lack of appropriate drainage, protection and enhancement of the ecology of the site, highways safety and archaeology, which further conflicts with the environmental and sustainability policies of the Development Plan.
- 10.8. In this instance, it is considered the proposal is at odds with the overall rural housing strategy of the district and the potential harm caused would not significantly and demonstrably outweigh the scheme's benefits; and as such do not represent a sustainable form of development. The proposals are therefore considered contrary to the above-mentioned policies and as such the application is therefore recommended for refusal for the reasons set out below.
- 10.9. Given the above officers consider that the benefit of the proposal such as providing additional housing including affordable housing are considered to be outweighed the policy conflict and identified harm of the scheme identified above.

## **11. RECOMMENDATION**

### **REFUSAL FOR THE REASONS SET OUT BELOW**

1. The proposed development would be an urbanising form of development which by reason of its location and the proposed land use would result in an isolated cluster of dwellings poorly related to the existing village and falling outside the settlement area defined by Policy PD1 of the MCNP. The proposal would adversely impact the rural setting of the village and would result in a harmful visual intrusion of development into the landscape and open countryside and would therefore result in harm to the rural character and appearance and

quality of the area. In addition, it would cause damage to the significance of the adjacent designated heritage asset by irrevocably removing the rural setting of the Conservation Area. The proposal would not provide an appropriate housing mix for the provision of affordable housing of development. This identified harm would significantly and demonstrably outweigh the benefits of the proposal. The proposal is therefore contrary to Policies PD1 and PD4 of the Mid-Cherwell Neighbourhood Plan 2018-2031, Policies BSC2, BSC3, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policies C8 and C28 of the Cherwell Local Plan 1996 and the National Planning Policy Framework.

2. The proposed development would be sited in a geographically unsustainable location with poor access to services and facilities and therefore future residents would be highly reliant on the private car to meet their day to day needs which would not reduce the need to travel and would result in increased car journeys and hence carbon emissions. The proposed development therefore conflicts with Policies ESD1 and SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework. This identified harm would significantly and demonstrably outweigh the benefits associated with the proposed development and therefore the development does not constitute sustainable development when assessed against the National Planning Policy Framework as a whole.
3. By virtue of a lack supporting information the proposals have failed to demonstrate that the proposal would be acceptable in terms of (i) highway safety and pedestrian safety, (ii) biodiversity and the natural environment of the site and (iii) potential archaeological deposits at the site. As such the proposal is contrary to Policies ESD10 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
4. By virtue of a lack supporting information to enable an appropriate technical assessment the proposals have failed to demonstrate that an appropriate sustainable drainage strategy for the site utilising sustainable drainage systems (SuDS) can be delivered. As such the proposal is contrary to Policy ESD7 of the Cherwell Local Plan 2011 - 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
5. In the absence of the completion of a satisfactory Section 106 Agreement, the Local Planning Authority is not convinced that the necessary infrastructure directly required as a result of this development, in the interests of supporting the sustainability of the village and the development, and in the interests of safeguarding public infrastructure and securing on site future maintenance arrangements, will be provided. This would be contrary to Policies INF1, PSD1, BSC3, BSC10, BSC11 and BSC12 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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CASE OFFICER: Michael Sackey